IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL FIRST APPEAL NO.91/1988
(M/s. Capital Industries Pvt. Ltd. Vs. M/s. Bikaner Gypsum Private Ltd.)

Date of order : July 9th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.K. Punia, for the appellant.
Mr. S.N. Trivedi, for the respondent.

By way of filing the present first appeal under Section 96, C.P.C., the appellant M/s. Capital Industries Pvt. Ltd. has challenged the judgment and decree dated 28.4.1988 passed by Additional District Judge, Bikaner in Civil Original Suit No.18/185 whereby the learned trial Court has decreed the suit for Rs.11,421.86 paisa against the defendant-appellant.

According to the facts narrated in the appeal, a suit for recovery of money was filed against the defendant-appellant by the plaintiff-respondent. In the suit, it was averred that there existed commercial relations between the plaintiff and

defendant and the defendant-appellant used to purchase gypsum from plaintiff-respondent from time to time, and till 1.4.69 a sum of Rs.4,950.13 paisa was due in the defendant-appellant. It was further averred that during the period from 5.4.69 to 24.11.69, the defendant-appellant purchased gypsum of Rs.27,924.89 paisa. Out of the said amount, a sum of Rs.17,999.03 was paid. According to the suit filed by the plaintiff-respondent, a sum of Rs.14,885.24 paisa which includes interest was due in defendant-appellant.

Written statement was filed by the defendant-appellant controverting the allegations made in the suit and it was specifically denied that there was any commercial relations between the plaintiff and defendant. It was further stated that the defendant-company is known as M/s. Capital Industries Pvt. Limited whereas the plaintiff has commercial relations with the Society known as M/s. Capital Cooperative Industries Society Limited. It was also pointed out that bills were also in the name of the Society and further declaration given under Form-'C' as required under the provision of the Sales Tax Act, was also given by the said Society. While denying the commercial relations, it was further replied that there is no jurisdiction left with the Court.

Learned trial Court framed seven issues, which are as follows :

"1} आया वादी कपंनीज एक्ट के तहत एक रजिस्टर्ड कंपनी है, जिसका रजिस्टर्ड ऑफिस सादुल क्लब बिल्डिंग बीकानेर में है ?

2} आया वादी को प्रतिवादी से व्यापारिक संबंध काफी अर्से से था व ता० 1.4.69 को वादी के प्रतिवादी में रू० 4950 रू० 13 पैसे बाकी थे ।

3} आया ता० 5.4.69 से 24.11.69 के बीच प्रतिवादी ने वादी से रू० 27924.89 पैसे का जिप्सम खरीदा व विभिन्न तारीखों में रू० 17990 रू० 03 पैसे अदा किये व अब वादी के प्रतिवादी में रू० 14885.04 पैसे मूल के बकाया हैं ।

4} आया वादी प्रतिवादी से बकाया रकम पर 75 पैसे सैकंडा माहवार से सूद के रू० 1562.96 प्राप्त करने का अधिकारी है ?

5} आया वादी का व्यवहार व लेन देन मै० केपीटल को-ओपरेटिव इंडस्ट्रीज सोसायटी के साथ था व अदायगी में उस के बिहाफ पर की गई है व प्रतिवादी से उसका कोई ताल्लुक नहीं है । अत: वह फरीक गैर जरूरीक मुकदमा है ।

6} आया यह दावा इस अदालत के श्रवणाधिकार का नहीं है ?

7} दादरसी ?"

After framing of the issues as above, the statement of witnesses on behalf of plaintiff namely PW-1 Hanuwant Singh, PW-2 B.C. Mukherji, PW-3 Dwarka Prasad and PW-4 B.B. Shah were recorded. On behalf of defendant, DW-1 N.N. Bhaskar was examined. After recording oral evidence, the learned trial Court proceeded to decide the matter and finally it was held by learned trial Court that all the rights and liabilities of the earlier company which is Bikaner Gypsum (P) Ltd. were transferred to Rajasthan Mines and Mineral Ltd. as is evident from Ex.2, therefore, issue No.1 was decided in favour of the plaintiff. Learned trial Court while deciding issue No.2 held

that plaintiff has failed to establish the transaction of Rs.4,950.13 paisa. Thus, the issue no.2 was decided against the plaintiff. Further while deciding issue No.3, the learned trial court held that the plaintiff is entitled to recover a sum of Rs.9,934.86 paisa and the said amount was due and according to issue No.4, the learned trial Court held that the plaintiff is entitled to interest of Rs.1,487/- on the principal amount and Rs.9,934.86 paisa. Issue No.5 was also decided in favour of the plaintiff and it has been held that the commercial transaction of the plaintiff was with the defendant-company, as such, the Society was not necessary party. Issue with regard to jurisdiction was also decided in favour of the plaintiff. As such, the learned trial Court decreed the suit for a sum of Rs.11,421.86 paisa with interest thereon @ 6% per annum.

Learned counsel for the appellant argued that the learned Additional District Judge has committed error in deciding issue No.5 against the defendant-appellant while holding that the commercial transaction was between the plaintiff and the defendant and not with M/s Capital Cooperative Society Ltd. According to the counsel for the appellant, the conclusion arrived at by the learned trial court is erroneous and while coming to the conclusion, learned trial court has ignored the material fact that the sales-tax declaration was given by M/s. Capital

Cooperative Society Ltd. and the said fact is not disputed by the plaintiff that the declaration in Form-'C' has been given by M/s Capital Cooperative Society Ltd. Therefore, the learned trial court has mis-directed by placing reliance on bills Ex.22 to Ex.36, which are said to have been prepared by the defendant. It is further submitted that the learned Judge has glazed over important fact that the said bills are in the name of M/s Capital Cooperative Society Ltd. Therefore, this amount, if any, was to be recovered from the said Society. It is further submitted that as per the correspondence, it is obvious that the defendant has acted as an agent to carry out the correspondence on behalf Society. Therefore, the finding of the learned trial Judge with regard to issue No.5 is erroneous and no liability can be held against the defendant-appellant.

It is further argued that the learned Judge has committed an error while deciding issue No.3 in favour of the plaintiff-respondent and as against the defendant-appellant because the plaintiff has not produced documentary evidence which is Advised Memo from the Mines or copy of the bilty etc. to show the transaction of purchase of gypsum from the defendant company. Simply on the basis of bill book, it cannot be held that the amount is due. Therefore, it is argued that the judgment and decree passed by the learned trial Court deserves to be set aside.

On the other hand, learned counsel for the plaintiff-respondent vehemently argued that by way of producing bills and correspondence Ex.22 to Ex.36, it is proved by the plaintiff that all these bills and correspondence were in between the plaintiff-respondent and defendant-appellant. Further, it is argued that as per Ex.25 and Ex.28, there is a seal upon which it is written, “Issue bill in the name of CAPITAL CO-OP. INDUSTRIES SOCIETY LTD. their Sales Tax No. CENTRAL 2320 Dt. 1-7-57”, therefore, by documentary evidence it is clearly proved before the learned trial Court by the plaintiff-respondent that there was commercial transaction in between the plaintiff and defendant and outstanding was against defendant-appellant. Learned trial court has rightly gave its finding with regard to issue No.5. It is further submitted that by way of filing the present appeal, the appellant has only challenged the finding of issue No.3 and 5 but upon perusal of oral as well as documentary evidence, it is not disputed by the defendant-appellant that correspondence was in between the parties, therefore, the plea taken by the defendant was rightly rejected by the learned trial court.

I have considered the rival submissions made by both the learned counsel for the parties and perused the entire record of the case as well as the

evidence.

Obviously, by way of filing the present appeal, the appellant has challenged the finding given by learned trial Court with regard to issue No.3 and 5. In this appeal, the appellant has not disputed the documentary evidence, which is placed on record as Ex.22 to Ex.36, which includes correspondence in between the plaintiff and defendant as well as bills. Learned trial Court has relied upon the most important fact while deciding issue No.5 that in all the correspondences, it is clear that there was commercial transaction in between M/s. Bikaner Gypsum Ltd. and M/s. Capital Industries Pvt. Ltd. While relying upon the documentary evidence in right perspective, the learned trial court has decreed the suit. I have perused the finding of issue No.5. Learned trial Court while deciding this issue relied upon the documentary evidence, which was placed on record at the time of trial and held that there was commercial transaction in between the plaintiff and defendant and it was specifically written by defendant-appellant to the plaintiff-respondent that bill may be issued in the name of M/s. Capital Industries Co-operative Society Ltd. while treating that firm as affiliated unit and the learned trial Court has rightly held that mere filing of Form-'C' in the name of M/s. Capital Co-operative Industries Society Ltd. does not give any strength to the contention of the defendant-appellant

that there was no commercial transaction in between the plaintiff and defendant. The whole correspondence including bills were in the name of M/s. Capital Industries Pvt. Ltd. and orders were also placed by the M/s. Capital Industries Pvt. Ltd., therefore, the finding given by learned trial Court with regard to issue No.5 does not require any interference by this Court. The arguments advanced by the learned counsel for the defendant-appellant with regard to issue No.3 cannot be accepted because sufficient evidence was placed on record to prove the issue No.3. Therefore, while relying upon the documentary evidence, the said issue was rightly decided by the learned trial Court in favour of plaintiff-respondent. Therefore, I see no reason to interfere with the finding with regard to issue No.3 also.

Thus, in view of the above discussions, I see no reason to interfere with the judgment and decree dated 28.4.1988 passed by Additional District Judge, Bikaner. Hence, the appeal is dismissed.

(GOPAL KRISHAN VYAS), J.

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